

ASSEMBLY BILL

No. 2369

Introduced by Assembly Member Block

February 19, 2010

An act to amend Section 3103.5 of, and to amend and repeal Sections 3102 and 3103 of, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 2369, as introduced, Block. Elections: ballots.

Existing law permits a voter to return a vote by mail ballot either by mail to the elections official from whom it came or by personal delivery to the elections official or to a precinct board member at any polling place within the jurisdiction.

Existing law also permits until January 1, 2011, a voter who is temporarily living outside of the territorial limits of the United States, the District of Columbia, or is called to military service, to return his or her vote by mail ballot by facsimile transmission to the elections official. The ballot has to be received by the closing of the election day polls and accompanied by an identification envelope and an oath of voter declaration in a prescribed form.

Existing law requires a special absentee voter to agree under penalty of perjury to waive his or her right to a secret ballot and that he or she has not applied for a vote by mail ballot from any other jurisdiction for the election. The elections official is required to determine the voter's eligibility to vote by comparing the voter's signature from the materials returned by facsimile transmission to the signature on the voter's affidavit of registration.

This bill would extend these provisions permanently. Because the bill requires elections officials to provide a higher level of service and

extends the crime of perjury on a permanent basis, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3102 of the Elections Code, as amended
2 by Section 1 of Chapter 252 of the Statutes of 2008, is amended
3 to read:

4 3102. (a) Applications for the ballots of special absentee voters
5 shall be received and, except as provided in Section 3103.5, the
6 ballots shall be received and canvassed, at the same time and under
7 the same procedure as vote by mail ballots, insofar as that
8 procedure is not inconsistent with this chapter.

9 (b) ~~This section shall remain in effect only until January 1, 2011,~~
10 ~~and as of that date is repealed, unless a later enacted statute, that~~
11 ~~is enacted before January 1, 2011, deletes or extends that date.~~

12 SEC. 2. Section 3102 of the Elections Code, as amended by
13 Section 2 of Chapter 252 of the Statutes of 2008, is repealed.

14 ~~3102. (a) Applications for the ballots of special absentee voters~~
15 ~~shall be received, and the ballots shall be received and canvassed~~
16 ~~at the same time and under the same procedure as vote by mail~~
17 ~~ballots, insofar as that procedure is not inconsistent with this~~
18 ~~chapter.~~

19 (b) ~~This section shall become operative January 1, 2011.~~

20 SEC. 3. Section 3103 of the Elections Code, as amended by
21 Section 3 of Chapter 252 of the Statutes of 2008, is amended to
22 read:

23 3103. (a) Any application made pursuant to this chapter that
24 is received by the elections official prior to the 60th day before

1 the election shall be kept and processed on or after the 60th day
2 before the election.

3 (b) The elections official shall immediately send the voter a
4 ballot in a form prescribed and provided by the Secretary of State.
5 The elections official shall send with the ballot a list of all
6 candidates who have qualified for the ballot by the 60th day before
7 the election and a list of all measures that are to be submitted to
8 the voters and on which the voter is qualified to vote. The voter
9 shall be entitled to write in the name of any specific candidate
10 seeking nomination or election to any office listed on the ballot.

11 (c) Notwithstanding Section 15341 or any other provision of
12 law, any name written upon a ballot for a particular office pursuant
13 to subdivision (b) shall be counted for the office or nomination,
14 providing the candidate whose name has been written on the ballot
15 has, as of the date of the election, qualified to have his or her name
16 placed on the ballot for the office, or has qualified as a write-in
17 candidate for the office.

18 (d) Except as provided in Section 3103.5, the elections official
19 shall receive and canvass special absentee voter ballots described
20 in this section under the same procedure as vote by mail ballots,
21 insofar as that procedure is not inconsistent with this section.

22 (e) In the event that a voter executes a special absentee ballot
23 pursuant to this section and an application for a vote by mail ballot
24 pursuant to Section 3101, the elections official shall cancel the
25 voter's permanent vote by mail status, and process the application
26 in accordance with Chapter 1 (commencing with Section 3000).

27 (f) Notwithstanding any other provision of law, a special
28 absentee voter who qualifies pursuant to this section may, by
29 facsimile transmission, register to vote and apply for a special
30 absentee ballot or a vote by mail ballot. Upon request, the elections
31 official may send to the qualified special absentee voter either by
32 mail, facsimile, or electronic transmission the special absentee
33 ballot or, if available, a vote by mail ballot pursuant to Chapter 1
34 (commencing with Section 3000).

35 ~~(g) This section shall remain in effect only until January 1, 2011,~~
36 ~~and as of that date is repealed, unless a later enacted statute, that~~
37 ~~is enacted before January 1, 2011, deletes or extends that date.~~

38 SEC. 4. Section 3103 of the Elections Code, as amended by
39 Section 4 of Chapter 252 of the Statutes of 2008, is repealed.

1 3103. ~~(a) Any application made pursuant to this chapter that~~
2 ~~is received by the elections official prior to the 60th day before~~
3 ~~the election shall be kept and processed on or after the 60th day~~
4 ~~before the election.~~

5 ~~(b) The elections official shall immediately send the voter a~~
6 ~~ballot in a form prescribed and provided by the Secretary of State.~~
7 ~~The elections official shall send with the ballot a list of all~~
8 ~~candidates who have qualified for the ballot by the 60th day before~~
9 ~~the election and a list of all measures that are to be submitted to~~
10 ~~the voters and on which the voter is qualified to vote. The voter~~
11 ~~shall be entitled to write in the name of any specific candidate~~
12 ~~seeking nomination or election to any office listed on the ballot.~~

13 ~~(c) Notwithstanding Section 15341 or any other provision of~~
14 ~~law, any name written upon a ballot for a particular office pursuant~~
15 ~~to subdivision (b) shall be counted for the office or nomination,~~
16 ~~providing the candidate whose name has been written on the ballot~~
17 ~~has, as of the date of the election, qualified to have his or her name~~
18 ~~placed on the ballot for the office, or has qualified as a write-in~~
19 ~~candidate for the office.~~

20 ~~(d) The elections official shall receive and canvass special~~
21 ~~absentee voter ballots described in this section under the same~~
22 ~~procedure as vote by mail ballots, insofar as that procedure is not~~
23 ~~inconsistent with this section.~~

24 ~~(e) In the event that a voter executes a special absentee ballot~~
25 ~~pursuant to this section and an application for a vote by mail ballot~~
26 ~~pursuant to Section 3101, the elections official shall reject the~~
27 ~~voted ballot previously cast, cancel the voter's permanent vote by~~
28 ~~mail status, and process the application in accordance with Chapter~~
29 ~~1 (commencing with Section 3000).~~

30 ~~(f) Notwithstanding any other provision of law, a special~~
31 ~~absentee voter who qualifies pursuant to this section may, by~~
32 ~~facsimile transmission, register to vote and apply for a special~~
33 ~~absentee ballot or a vote by mail ballot. Upon request, the elections~~
34 ~~official may send to the qualified special absentee voter either by~~
35 ~~mail, facsimile, or electronic transmission the special absentee~~
36 ~~ballot or, if available, a vote by mail ballot pursuant to Chapter 1~~
37 ~~(commencing with Section 3000).~~

38 ~~(g) This section shall become operative January 1, 2011.~~

39 SEC. 5. Section 3103.5 of the Elections Code is amended to
40 read:

1 3103.5. (a) ~~(1)~~—A special absentee voter who is temporarily
 2 living outside of the territorial limits of the United States or the
 3 District of Columbia, or is called for military service within the
 4 United States on or after the final date to make application for a
 5 vote by absent voter ballot, may return his or her ballot by facsimile
 6 transmission. To be counted, the ballot returned by facsimile
 7 transmission must be received by the voter’s elections official no
 8 later than the closing of the polls on election day and must be
 9 accompanied by an identification envelope containing all of the
 10 information required by Section 3011 and an oath of voter
 11 declaration in substantially the following form:

OATH OF VOTER

12
 13
 14 I, _____, acknowledge that by returning my voted
 15 ballot by facsimile transmission I have waived my right to have my ballot
 16 kept secret. Nevertheless, I understand that, as with any vote by mail
 17 voter, my signature, whether on this oath of voter form or my identification
 18 envelope, will be permanently separated from my voted ballot to maintain
 19 its secrecy at the outset of the tabulation process and thereafter.

20
 21 My residence address is _____.
 22 (Street Address) (City) (ZIP Code)

23
 24 My current mailing address is _____.
 25 (Street Address) (City) (ZIP Code)

26
 27 My e-mail address is _____. My facsimile transmission
 28 number is _____.

29
 30 I am a resident of _____ County, State of California, and I have not
 31 applied, nor intend to apply, for a vote by mail ballot from any other jurisdiction
 32 for the same election.

33
 34 I declare under penalty of perjury under the laws of the State of California
 35 that the foregoing is true and correct.

36
 37 Dated this _____ day of _____, 20____.

38
 39 (Signature) _____

1 voter (power of attorney cannot be accepted)

2

3 YOUR BALLOT CANNOT BE COUNTED UNLESS YOU SIGN THE
4 ABOVE OATH AND INCLUDE IT WITH YOUR BALLOT AND
5 IDENTIFICATION ENVELOPE, ALL OF WHICH ARE RETURNED
6 BY FACSIMILE TRANSMISSION.

7

8 ~~(2)~~

9 (b) Notwithstanding the voter’s waiver of the right to a secret
10 ballot, each elections official shall adopt appropriate procedures
11 to protect the secrecy of ballots returned by facsimile transmission.

12 ~~(3)~~

13 (c) Upon receipt of a ballot returned by facsimile transmission,
14 the elections official shall determine the voter’s eligibility to vote
15 by comparing the signature on the return information with the
16 signature on the voter’s affidavit of registration. The ballot shall
17 be duplicated and all materials preserved according to procedures
18 set forth in this code.

19 ~~(4)~~

20 (d) Notwithstanding ~~paragraph (1)~~ *subdivision (a)*, a special
21 absentee voter who is permitted to return his or her ballot by
22 facsimile transmission is, nonetheless, encouraged to return his or
23 her ballot by mail or in person if possible. A special absentee voter
24 should return a ballot by facsimile transmission only if doing so
25 is necessary for the ballot to be received before the close of polls
26 on election day.

27 ~~(b) The Secretary of State shall make a recommendation to the~~
28 ~~Legislature, no later than December 31, 2008, on the benefits and~~
29 ~~problems, if any, derived from permitting qualified special absentee~~
30 ~~voters to return their ballots by facsimile transmission, and shall~~
31 ~~include in the recommendation the number of ballots returned by~~
32 ~~facsimile transmission pursuant to this section.~~

33 ~~(e) This section shall remain in effect only until January 1, 2011,~~
34 ~~and as of that date is repealed, unless a later enacted statute, that~~
35 ~~is enacted before January 1, 2011, deletes or extends that date.~~

36 SEC. 6. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution for certain
38 costs that may be incurred by a local agency or school district
39 because, in that regard, this act creates a new crime or infraction,
40 eliminates a crime or infraction, or changes the penalty for a crime

1 or infraction, within the meaning of Section 17556 of the
2 Government Code, or changes the definition of a crime within the
3 meaning of Section 6 of Article XIII B of the California
4 Constitution.

5 However, if the Commission on State Mandates determines that
6 this act contains other costs mandated by the state, reimbursement
7 to local agencies and school districts for those costs shall be made
8 pursuant to Part 7 (commencing with Section 17500) of Division
9 4 of Title 2 of the Government Code.

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